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Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Visit to Benin undertaken from 11 to 15 January 2016: observations and recommendations addressed to the State party

Report of the Subcommittee*, **

* In accordance with article 16 (1) of the Optional Protocol, the present report was transmitted confidentially to the State party on 6 December 2016. On 26 July 2018, the State party requested the Subcommittee to publish the report, in accordance with article 16 (2) of the Optional Protocol.

** The annexes are being circulated as received, in the language of submission only.

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I. Introduction

1. The Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment undertook its second visit to Benin from 11 to 15 January 2016 in accordance with articles 11 and 13 (4) of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

2. The delegation was made up of the following members of the Subcommittee: Mr. Victor Madrigal-Borloz (head of delegation), Mr. Gnambi Garba Kodjo, Mr. Paul Lam Shang Leen, Ms. Radhia Nasraoui and Ms. Catherine Paulet.

3. The Subcommittee members were assisted by four staff members of the Office of the United Nations High Commissioner for Human Rights, including two security officers.

4. The Subcommittee visited several types of place of deprivation of liberty.[1]

5. The Subcommittee met and held discussions with the relevant Beninese authorities, the Human Rights Advisory Council, civil society organizations and the bar association of Cotonou, as well as with representatives of the United Nations Development Programme. The Subcommittee wishes to thank them for the valuable information they provided.

6. The purpose of the visit was to follow up on the implementation of the recommendations made by the Subcommittee after its first regular visit to the country, from 17 to 26 May 2008.[2] The visit enabled the Subcommittee to observe the progress made towards implementing the recommendations contained in the previous report and the efforts still to be made by the State party.

7. On 15 January 2016, at the conclusion of the visit, the Subcommittee presented its confidential preliminary observations orally to the Beninese authorities. They were able to provide initial replies to some of the Subcommittee's concerns.

8. The present report uses the generic term "ill-treatment" to refer to any form of cruel, inhuman or degrading treatment or punishment.

9. In view of the limited progress achieved, the observations and recommendations made in the Subcommittee's previous report are still fully valid and applicable. That report therefore remains in force.

10. The present report will remain confidential until such time as the Beninese authorities decide to make it public, as stipulated in article 16 (2) of the Optional Protocol. The Subcommittee wishes to draw the State party's attention to the possibility of applying for funding from the Special Fund established pursuant to article 26 of the Optional Protocol, for specific projects to implement the recommendations contained in the present report, on condition that the report has been made public.

11. **The Subcommittee recommends that Benin consider publishing this report in accordance with article 16 (2) of the Optional Protocol.**

II. Facilitation of the visit and cooperation

12. The Subcommittee wishes to express its gratitude to the Beninese authorities for their excellent cooperation and their facilitation of the visit. It wishes, in particular, to thank the Government of Benin for granting it unrestricted access to places of detention in conformity with the Optional Protocol and designating as the liaison officer and intermediary for the Subcommittee Mr. Boris Tokpanou, whose diligence helped facilitate the on-site visit. It also thanks the Permanent Mission of Benin to the United Nations Office at Geneva, with which the Subcommittee had a constructive dialogue.

[1] See list in annex II.

[2] See CAT/OP/BEN/1.

13. The Subcommittee finds it regrettable, however, that the information and documents it had requested before the visit were not provided until very late, thereby preventing it from preparing for the visit in a wholly satisfactory manner.

14. The Subcommittee notes with satisfaction that the prison wardens and the authorities at police and gendarmerie stations, including junior personnel, were duly informed of its visit and provided full access to places of deprivation of liberty and detainees. It also notes the level of professionalism, courtesy and efficiency of custodial staff, in addition to their support for human rights principles, which is probably the result of their human rights training.

15. This cooperation and this positive attitude are a considerable improvement on what it experienced on the visit in 2008, during which the Subcommittee had problems gaining access to some places of detention and detainees.

III. Report methodology and structure

16. The Subcommittee stresses that, despite some improvements, very limited in scope, the situation has not changed much in the State party and that, in some cases, it has become worse. The purpose of the Subcommittee's observations and recommendations is therefore not to go over again at length those already made in the previous report but rather to enable the State party to reflect on the prevention of torture and in particular on the goals and objectives of the criminal justice and prison systems that such prevention requires.

17. The Subcommittee's report thus has four main parts: the first reverts to the issue of the national preventive mechanism, which the State party has still not put in place; the second focuses on various aspects of the conditions of detention; the third deals with the administration of justice and penal policy; and the fourth examines prison policy. As there has been little improvement, the Subcommittee is of the view that these chapters address intrinsically linked structural problems and that analysing them together is likely to contribute to the prevention of ill-treatment.

IV. National preventive mechanism

18. The Subcommittee notes that the State party ratified the Optional Protocol in 2006 and that, pursuant to article 17 thereof, it undertook to establish, within one year, a national preventive mechanism, which has not yet been done. The Subcommittee finds it regrettable that it was unable to meet with the members of the ad hoc working group on the national preventive mechanism, although it had made a specific request to do so.

19. The State party appears to have opted to establish its national preventive mechanism as part of the Benin Human Rights Commission, in part for reasons related to resource constraints. The Subcommittee takes note of Act No. 2012-36, the Benin Human Rights Commission Act, the text of which was transmitted to it by the authorities of the State party. It also notes that, under article 4 of this Act, the Benin Human Rights Commission is empowered to "conduct periodic visits, with or without notice, to places of detention or confinement in order to prevent all human rights violations", a power that is at the core of the mandate of a national preventive mechanism.

20. The Subcommittee notes, to be sure, that the State party has linked the establishment of a national preventive mechanism to the functioning of the Benin Human Rights Commission and that the mechanism is to be established by decree, but the Commission is not yet operational and, according to the information provided by the authorities themselves and civil society organizations, it is facing a number of obstacles. These difficulties are, to all appearances, delaying the establishment of the national preventive mechanism, which is becoming a matter of great urgency.

21. The Subcommittee does not take positions on the advisability of establishing a national preventive mechanism that is a separate body or part of a national human rights institution. It notes, however, that the provisions of article 4 of the Benin Human Rights

Commission Act do not provide the guarantees required in article 18 of the Optional Protocol.

22. The Subcommittee is of the view that the failure to establish, designate or maintain a national preventive mechanism in conformity with the Optional Protocol is a serious breach of the international obligations set out in that instrument.

23. **The Subcommittee recommends that the State party make the establishment of a national preventive mechanism a priority. It also recommends that the State party ensure that the national preventive mechanism is afforded the full guarantees established in the Optional Protocol, in particular in article 18. Finally, it recommends that the process of setting up the national preventive mechanism be inclusive and that it be carried out in consultation with all relevant civil society organizations.**

V. Conditions of detention

A. Police and gendarmerie stations

1. Physical and sanitary conditions

24. The Subcommittee observed that detainees in police and local gendarmerie stations were held in conditions that were not in compliance with the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules).[3] The majority of the holding cells were cramped, lacking light inside or dimly lit, and did not have running water or toilets, with the exception of the men's cell at the central police station in Cotonou, which had a toilet, a shower and a working tap. Detainees slept on the floor. The cells were rarely clean; for example, the women's cell at the central police station was in a state of extreme squalor (it contained a pile of refuse and faecal matter).

25. The interviews held by the Subcommittee made it clear that most police and gendarmerie stations did not have the budgets to feed the persons in custody.

26. **The Subcommittee recommends that the Beninese authorities improve the conditions of detention in police and gendarmerie stations and that they take the necessary measures to: (a) ensure that holding cells have sufficient natural or artificial light; (b) improve the hygiene conditions and sanitation in holding facilities; (c) provide bedding and mosquito nets to persons in custody and exterminate the mosquitoes in the cells and the premises; (d) give the police and gendarmerie stations budgets for the purchase of food; and (e) ensure that persons in custody have access, on the premises, to potable water, toilets and showers.**

2. Fundamental legal safeguards

27. The adoption and entry into force of the new Code of Criminal Procedure, as well as efforts to raise awareness of the Code among police officers and gendarmes, have had a positive impact on the observance of basic legal safeguards. The Subcommittee believes that this is a very positive development. It notes, however, that the systematic application of these provisions in practice still presents some challenges.

(a) Right to be informed of one's rights and the reasons for one's arrest

28. The Subcommittee notes that article 59 of the new Code of Criminal Procedure guarantees the right of detainees to be informed of the reasons for their arrest and their rights to be represented by counsel, to be examined by a doctor of their choice, and to notify a family member of their arrest and receive a visit from him or her. The Subcommittee observed that, in general, police officers and gendarmes respected this right. The Subcommittee noted, however, that this right was not systematically respected everywhere and in all circumstances.

[3] General Assembly resolution 70/175 of 17 December 2015, annex. See rules 12 to 16.

29. **The Subcommittee recommends that the State party enhance training of and awareness-raising among police officers and gendarmes so that, in all places and in all circumstances, persons in custody are informed of all their rights.**

(b) Right of access to a lawyer

30. The right of access to a lawyer is explicitly mentioned in articles 59, 72 and 78 of the new Code of Criminal Procedure. The Subcommittee received reports that, in most cases, people were informed of their right to appoint a lawyer. However, the Subcommittee is concerned about information transmitted by the national authorities and police and gendarmerie stations according to which nearly half of the persons in custody were unable to afford a lawyer. It was also clear from other information obtained by the Subcommittee from the authorities and police and gendarmerie stations that, while in custody and during pretrial investigations, persons assisted by lawyers could send for them during the period before the start of the hearing. Lawyers could assist their clients during questioning and make any necessary comments. In cases where a hearing was conducted in the absence of a lawyer, that absence was reflected in the record of the hearing. The Subcommittee wishes to emphasize that this is an improvement over the findings noted in its previous report.[4]

31. **The Subcommittee recommends that the State party ensure that the provisions of the Code of Criminal Procedure and the Nelson Mandela Rules are fully implemented, with a view to enabling persons taken into custody, in all cases, to have access to a lawyer from the moment of their detention.**

(c) Right to a medical examination

32. The right to a medical examination is guaranteed in articles 59 and 63 of the new Code of Criminal Procedure. As in 2008, the Subcommittee is concerned that these provisions are poorly enforced. Interviews conducted by the Subcommittee made it clear that most persons held in custody had not been informed of their right to a medical examination and that such an examination was not systematically offered to them when they were taken into custody. The Subcommittee was nonetheless informed that persons who were sick were asked if they wished to see a doctor or undergo a medical examination at the nearest clinic. In addition, the Subcommittee was informed that initial care was charged to persons who were sick, some of whom therefore went without treatment.

33. **The Subcommittee recommends that a medical examination be routinely provided for all arrested persons as soon as possible after they are brought into custody, especially if they show signs of ill health, whether they stem from the arrest or not. The Subcommittee also recommends that the State party set up registers at all facilities in which to record the medical examinations and the care provided to persons held in custody.**

(d) Right to notify family members

34. This right is established in article 59 of the new Code of Criminal Procedure. In its previous report, the Subcommittee noted that several people had reported that they had been unable to notify their families of their arrest, despite repeated requests. The Subcommittee noted a clear improvement in respect for this right. Most detainees reported having been informed of their right to contact their families and had been able to do so.

35. **The Subcommittee recommends that the State party ensure that, in all cases and in all circumstances, persons taken into custody are able to contact their families and that it provide those who lack the wherewithal to do so with access to means of communication.**

(e) Duration of initial custody

36. Under articles 57, 61 and 62 of the Code of Criminal Procedure, a suspect may be held in custody for 48 hours. This period may be extended by authorization of the State

[4] CAT/OP/BEN/1, para. 83.

prosecutor, but it may not exceed eight days. The Subcommittee noted that, in general, the 48-hour period was respected and that, in practice, it was the State prosecutor who granted extensions. The Subcommittee is of the view that there has been progress and that efforts have been made to ensure that this period is respected. There is still room for improvement, however. In certain cases, this time limit had been exceeded, giving rise to abusive custody.

37. **The Subcommittee recommends that the State party be especially careful to ensure that, in all cases, the limits on the duration of the custody of suspects are fully respected in practice.**

3. Record-keeping

38. The Subcommittee noted the efforts made by the State party to develop a methodology for a unified register in police and gendarmerie stations and to train staff to set up such a register. The police and gendarmerie stations had registers that were fairly well kept. The Subcommittee welcomes this positive development. It notes that the standardization of registers should make it possible to collect and record information on the reasons for arrest, the exact time and date of the outset of detention, the length of detention, the end date, the identities of the detained person and the officer who authorized detention, and specifics concerning the place of detention, the timing of the first appearance before a judicial authority, the extension of detention, the authority that made the decision to extend detention and the length of the extension.

39. The Subcommittee noted with concern that there were lapses in the maintenance of registers and that they were not uniform in all the places it visited. In the police and gendarmerie stations, the registers did not include information on the age, the release or the time of release of persons taken into custody or even the date of the outset of custody. There were also failures to record data in real time. In one police station, only the occurrence book was kept in real time, whereas the custody register was filled in after the fact — it was two months behind on the day of the visit. The Subcommittee remains concerned about the lack of rigour and systematization with which information about persons detained in police and gendarmerie stations is recorded.

40. **The Subcommittee recommends that the State party continue making efforts to put in place, in all police and gendarmerie stations, a standardized system to record strictly, systematically and comprehensively information about persons placed in custody.**

4. Allegations of torture and ill-treatment

41. The Subcommittee was informed of but few allegations of torture or ill-treatment of persons in custody. The Subcommittee did not see or meet persons in custody with marks on their bodies suggesting that they had been subjected to ill-treatment. However, the Subcommittee remains concerned about the information provided by some prisoners at the Abomey prison, who stated that they had been subjected to violence while in police or gendarmerie custody.

42. **The Subcommittee considers that the situation has changed for the better and that there has been a significant improvement. It encourages the State party to be particularly careful to ensure that, in all places, persons in custody are not subjected to ill-treatment; that, in the event of ill-treatment, they may file complaints; that immediate, impartial investigations of these violations (Convention against Torture, arts. 12 and 13) are carried out; and that the perpetrators, if found guilty, are punished.**

B. Prisons

1. Overcrowding and physical conditions of detention

43. At the time of the Subcommittee's visit, the civilian prisons in Cotonou and Abomey were still overcrowded. The Subcommittee's previous recommendations had clearly not been acted on.

(a) Abomey civilian prison

44. The Abomey prison, which has a maximum capacity of 200, housed 912 inmates, of whom 832 were men, 72 were women and 8 were minors. According to the deputy director, there were 12 members of staff, in addition to a military unit that provided security outside the prison. The Subcommittee is deeply concerned about the appalling conditions of detention at the Abomey prison, which had deteriorated since its 2008 visit. Chronic overcrowding affected all the buildings but the one for minors. The Subcommittee was especially struck by the situation in building 8, which housed 91 detainees in its 38 square metres, or 2.4 people per square metre. The considerable overcrowding resulted in a lack of privacy, and the buildings were old and in disrepair. The Subcommittee noted with concern the dreadful latrines and troubling sanitary conditions.

(b) Cotonou civilian prison

45. At the time of the visit, the prison, which had 14 buildings and a capacity of 400, had 1,140 inmates, including 316 convicted prisoners, 398 persons under investigation and 426 accused persons. The prison also housed 66 women, 3 infants and 19 other minors, including a girl. The staff was composed of 26 gendarmes divided into one team on duty and one on standby, which operated in alternation. They were supplemented by 50 members of the military, who rotated in and out and provided external security. Four or five health-care workers staffed the infirmary under the supervision of a head nurse.

46. The Subcommittee noted with concern that, although overcrowding had fallen since 2008, it was still considerable, with an occupancy rate of nearly 300 per cent. It noted with concern that the prison was divided into two parts: the so-called big yard and small yard. While the conditions of detention in the small yard were better, the conditions in the big yard were unsatisfactory and did not meet the requirements established by the Nelson Mandela Rules. Some of the cells in the buildings on the big yard were overcrowded. Building G was in a state of chronic overcrowding and great squalor. Some detainees, who had no mattresses, slept on mats. The toilets were also in an appalling state. The Subcommittee's interviews with inmates revealed that the amount and quality of the food were inadequate. The Subcommittee remains concerned about the poor conditions of detention in this prison.

(c) Akpro-Missérété civilian prison

47. At the time of the Subcommittee's visit, the Akpro-Missérété civilian prison, which had a capacity of 1,000, housed 581 inmates, of whom 64 were persons under investigation and 517 were convicts, including 14 sentenced to death and 12 sentenced by the International Criminal Tribunal for Rwanda. According to the prison authorities, the staff included 16 guards, reinforced by 10 members of the military, who provided security outside the prison. In addition, civilian staff members included a permanent nurse, a clerk and a secretary. Some buildings were already in a noticeable state of disrepair. The conditions of detention in the section housing the prisoners sentenced by the International Criminal Tribunal for Rwanda were very good. In the other sections, the prisoners lived in relatively hygienic conditions and had access to water, toilets and showers inside the buildings.

2. Separation of detainees

48. The Subcommittee observed that prisoners were separated by age and sex in the Abomey and Cotonou prisons. It remains concerned that the State party has not yet put into practice the principle of separating detainees by detention category in the prisons it visited. Nevertheless, the Subcommittee noted that, in the Akpro-Missérété prison, the death-row inmates were separated from other prisoners.

3. Record-keeping

49. The Subcommittee observed that the prisons had several registers, which were generally well maintained and contained relevant information. It is still concerned about the poor record-keeping at the Abomey civilian prison, where it found that the registers were in

a very poor state, with pages torn out of them, and could not constitute a genuine guarantee of protection. At the Cotonou civilian prison, the Subcommittee noted that there were records for admissions, transfers to hospital and deaths in the prison infirmary. At the Akpro-Missérété civilian prison, the Subcommittee examined the registers of the infirmary, including the records of consultations, which also noted deaths at the prison, the registers of temporary transfers for medical treatment and the registers of medical consultations by prisoners sentenced by the International Criminal Tribunal for Rwanda. The Subcommittee noted that the infirmary did not have records for admissions or deaths. It is also concerned about the absence of registers of complaints in the places it visited.

50. **The Subcommittee recommends that the State party take strong measures to reduce overcrowding in the Cotonou prison and to improve conditions of detention in the big yard blocks, in particular by ensuring that the detainees have a reasonable amount of space and a mattress to sleep on. It also recommends that the State party make frequent use of the alternatives to deprivation of liberty.**

51. **The Subcommittee recommends that, as a matter of urgency, the State party finalize work on the new prisons, transfer the prisoners from the Abomey prison to them and close the latter facility. The Subcommittee also requests the State party to ensure that the authorities do away with the differences in the conditions of detention in the Cotonou prison and that all prisoners are treated on an equal basis. The State party should also ensure that different kinds of prisoner are held separately, and particularly that minors are strictly separated from adults and that prisoners of one detention category are kept apart from those of another, in accordance with the Nelson Mandela Rules. It should ensure that prison registers are well maintained and standardized, so that they constitute a real safeguard against ill-treatment. Prison authorities should begin keeping records of detainee complaints.**

4. Solitary confinement

52. The Subcommittee observed that the three prisons it visited had solitary cells. It is concerned that detainees have been placed in solitary confinement in the Cotonou and Akpro-Missérété prisons in physical conditions that are not up to standard. At the Cotonou prison, where the Subcommittee visited two cells, it noted that one lacked an opening and ventilation and that the temperature was unsuitable, while the other — with a surface area of two metres by six — was cramped, had no opening and housed five persons. This cell had no running water and was foul-smelling.

53. The authorities explained to the Subcommittee that prisoners were placed in solitary confinement for disciplinary reasons and for serious criminal offences, by decision of the Prosecutor General or the prison warden, by decree and for at most eight days. The authorities at the Akpro-Missérété prison indicated that the decisions were made in accordance with the prison regulations. The Subcommittee is concerned about reports it received that the eight-day period was not always respected in, for example, the Cotonou prison, where a detainee said that he had spent more than a month in solitary confinement. The Subcommittee was also informed that some prisoners were placed in solitary confinement for trivial reasons.

54. At the Akpro-Missérété prison, the Subcommittee met a prisoner who had been in solitary confinement in a cell in building C1 (reserved for prisoners sentenced by the International Criminal Tribunal for Rwanda) for more than a month. The Subcommittee was informed that he had been placed there pursuant to an administrative decision made on account of the danger he posed.

55. The Subcommittee notes with concern that the aforementioned cases of solitary confinement were not in conformity with the Nelson Mandela Rules, as the solitary confinement had lasted for long periods of time and there was no guarantee of due process or independent oversight.[5] The Subcommittee emphasizes that effective legal procedures must be available to all prisoners to enable them to challenge any acts or omissions by prison staff or authorities that they consider to be in breach of the law. Under the Nelson

[5] Nelson Mandela Rules, rules 37 to 46.

Mandela Rules, solitary confinement as a disciplinary measure or punishment refers to the confinement of prisoners without meaningful human contact for 22 hours or more a day, which can extend for no more than 15 days, and should be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorization by a competent authority. The Subcommittee also reminds the State party that the lack of due process exposes prisoners to the risk of an arbitrary decision to place them in solitary confinement.

56. The Subcommittee therefore asked the warden of the prison, who, in a welcome development, complied with the request, to regularize the situation of the prisoner in solitary confinement.

57. **The Subcommittee recommends that the State party's prison authorities turn to solitary confinement only where necessary and as a last resort, for as short a time as possible, in accordance with the Nelson Mandela Rules. Any solitary confinement decisions should be subject to due process, so that the facts can be established and the prisoner has a chance to defend himself or herself at an independent review. To this end, the Subcommittee recommends the adoption of rules, known to prisoners, on the basis of which all decisions on placement in solitary confinement are made. The rules should be fully in line with international standards and the Nelson Mandela Rules. The Subcommittee also invites the State party to ensure that the solitary confinement cells in the Cotonou prison are reconfigured so as to have light, suitable temperatures, toilets and access to water.**

5. Torture and ill-treatment

58. The Subcommittee noted and was informed of but few allegations of ill-treatment in the interviews it held. It is nonetheless concerned about allegations from minors detained at the Abomey prison that they could be beaten as punishment when they misbehaved and from an adult inmate at the same prison, who told the Subcommittee that he had been beaten with a lash and a hosepipe by the yard boss in block 8. Interviews also made it clear that prisoners at the Abomey prison were shackled, sometimes all night, as a form of punishment.

59. **The Subcommittee recommends that the State party continue to raise awareness among members of prison staff in order to prevent any ill-treatment of prisoners and facilitate the submission of complaints by prisoners.**

C. Access to health care, hygiene, water and sanitation

1. Prison health care

60. At the prisons visited by the Subcommittee, with the exception of the Abomey prison, prisoners underwent a medical examination routinely on arrival. The Subcommittee finds it regrettable that this examination is not performed by a doctor and that health-care teams are made up solely of nurses. The Subcommittee is concerned that the sanitary conditions of the infirmaries were not always optimal and that the infirmaries themselves were understaffed. The health-care system in prisons still had shortcomings that would need to be overcome for it to be in full compliance with the Nelson Mandela Rules.[6]

61. In particular, the Subcommittee noted with concern: (a) the shortage of medicines and medical equipment at the infirmaries, especially since 2014 — the infirmary at the Abomey prison, for instance, had only paracetamol; (b) the decrease, caused by the lack of medication, in the number of consultations by inmates; (c) the absence of personalized medical records and of specific treatment for pregnant women, children, minors and older persons, particularly in the Cotonou and Abomey prisons; (d) the lack of specialists and the fact that psychologists and psychiatrists appeared only as expert witnesses in court cases; (e) the lack of vehicles for medical transfers; and (f) the lack of a genuine prison health policy.

[6] Nelson Mandela Rules, rules 24 to 35.

62. The Subcommittee is also troubled to have found that the records on medical consultations did not provide a full picture of health care and health problems in those prisons. It was informed that temporary transfers for medical treatment at the nearest hospitals were possible, in particular for emergencies. It was also informed that at the Abomey prison, two or three HIV-positive prisoners were going without treatment, that four or five persons with tuberculosis were being taken care of by the health centre as part of a national programme and that a non-governmental organization (NGO) provided treatment for persons with hepatitis.

63. **The Subcommittee recommends that the State party provide medical examinations routinely at the Abomey prison and that at all prisons such examinations be performed by a doctor. Alternatively, the State party should ensure that a consultation with a doctor can be arranged, at the request of a nurse, in the shortest possible time. The Subcommittee recommends that the State party: (a) ensure a sufficient supply of medicines and medical equipment in all the prisons visited, which will inspire in sick prisoners the confidence to seek treatment; (b) make official, through an agreement, access to universal health coverage and local hospitals; (c) provide prisons with vehicles to use for transfers for medical treatment; (d) fill the two vacancies for nurses at the Akpro-Missérété prison as soon as possible; (e) provide the medical personnel with in-service training relevant to the diseases or patient cohorts encountered; and (f) have an individual medical file for each patient and begin keeping records of the medical examinations of arriving prisoners, consultations, temporary transfers for medical treatment and deaths.**

2. Hygiene, water and sanitation

64. In the Cotonou and Akpro-Missérété prisons, the Subcommittee found that the hygiene conditions were satisfactory, except in some buildings in the big yard of the Cotonou prison. Nevertheless, interviews with prisoners revealed that some prisoners from the big yard were required to pay for access to more sanitary toilets. The Subcommittee is particularly concerned about the hygiene conditions and sanitation in the Abomey prison, which it finds appalling and likely to pose a danger to inmate health. It is also concerned about the major problem of access to water and the especially awful condition of the latrines, which had a foul smell.

65. **The Subcommittee recommends that the State party: (a) ensure that there is a supply of piped drinking water at the Abomey prison and that it is available to prisoners at no charge; (b) carry out sanitation and rehabilitation projects, in particular to provide decent latrines; (c) rehabilitate the Abomey prison and provide prisoners with hygiene products; (d) take measures for the collection and disposal of liquid and solid waste and excrement by specialized firms, rather than prisoners, to prevent the spread of disease.**

D. Minors in detention

66. The Subcommittee visited the Agblangandan Centre for the Protection of Children and Adolescents in Cotonou, which housed minors in conflict with the law, who had been placed under the supervision of the juvenile judge. It also met with minors detained in the Abomey and Cotonou prisons. Although the State party's policy of avoiding the detention of minors is welcome, the Subcommittee noted with concern that the conditions in which they were detained were neither very suitable nor in conformity with international standards. The Subcommittee is concerned that some children had no access to any educational activities or real skills training.

67. **The Subcommittee calls on the State party to ensure better conditions of hygiene at the Centre and to increase the resources it is allocated to guarantee better social and educational support for minors by ensuring that all are offered training to prepare them for reintegration into society. It also recommends that the State party improve both the amount and the quality of the food offered at the Centre.**

VI. Administration of justice and penal policy

A. Objectives of the justice system

68. The criminal justice system of Benin has taken a decisive step with the adoption and entry into force of the new Code of Criminal Procedure, some of the provisions of which still have to be implemented; this process will remain unfinished, however, until — to provide the State party with a comprehensive framework conducive to the proper administration of justice and a vision of its penal policy — the draft Criminal Code is adopted.

69. **The Subcommittee invites the State party to initiate broad reflection on the objectives of its criminal justice system in connection with the issues addressed above and to ensure that it has the means necessary to achieve them.**

B. Legal framework

1. Criminal Code

70. In its previous report, the Subcommittee had recommended that the State party should adopt the draft Criminal Code. The Subcommittee notes the information transmitted to it by the national authorities to the effect that the draft Criminal Code was still in the process of being adopted by the National Assembly. The Subcommittee wonders what the obstacles to its adoption are.

71. The Subcommittee is concerned that the current Criminal Code does not contain a provision defining torture and establishing it as a specific offence. The inclusion of the prohibition on torture in criminal legislation is a safeguard against both torture and impunity, as it allows victims to lodge complaints and the judiciary to make inquiries into and rule on acts defined by the Criminal Code.

72. The Subcommittee welcomes the accession of Benin, on 5 July 2012, to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. The Subcommittee noted, however, that accession to the Protocol has not been accompanied by the explicit abolition of the death penalty in Beninese criminal law. It emerged from the Subcommittee's interviews with national authorities and persons sentenced to death that the death sentences previously imposed on 14 prisoners at the Akpro-Missérété prison had not been adjusted as a result of the new situation.

73. **The Subcommittee recommends that the Beninese authorities: (a) adopt the draft Criminal Code as soon as possible and raise awareness among judicial officials regarding its implementation; (b) include in the draft Code provisions defining torture and establishing it as a specific offence; (c) abolish the death penalty in its criminal law in order to give full effect to the Second Optional Protocol; and (d) review and reconsider the legal status of persons sentenced to death in view of the State party's accession to the Protocol.**

74. The Subcommittee was struck by the presence in detention of persons of very advanced age (80 years or more) who were serving fairly long sentences, often for acts of witchcraft. In addition, the Subcommittee noted these persons' great vulnerability. It believes that defining witchcraft and charlatanism as criminal offences may pose a problem when it comes to ruling on the physical evidence of such offences.

75. The Subcommittee also found that people had been taken into custody or sentenced to prison for petty crime or debt. It was informed by various sources that debt was often later classified as breach of trust or fraud to justify its characterization as a criminal offence.

The Subcommittee reminds the State party that, in accordance with international standards, no one may be detained for a civil debt.[7]

76. **The Subcommittee recommends that the State party reflect on whether witchcraft and charlatanism should be criminalized in its criminal justice system. With regard to civil debt, the Subcommittee recommends that the State party ensure that practice with respect to its classification as a criminal offence is consistent with the relevant international provisions.**

2. Criminal justice tailored to specific groups

77. **Older persons**. The Subcommittee noted that the Code of Criminal Procedure does not have any specific provisions to address the vulnerability of older persons in judicial proceedings or in the enforcement of sentences handed down to them. At the Abomey prison, a number of very elderly women between the ages of 70 and 80 or more had been imprisoned for a long time, some while awaiting trial, in the very deplorable material conditions described above.

78. **The Subcommittee calls on the State party to reflect on the vulnerability of older persons in judicial proceedings and on ways of customizing the serving of sentences. It recommends that the State party review, as a matter of urgency, the individual situations of older persons deprived of their liberty in Benin.**

79. **Minors**. The Subcommittee, in a change from its previous visit, in 2008, did not encounter minors in police custody. At the Centre for the Protection of Children and Adolescents in Cotonou, the Subcommittee noted the presence of minors under the supervision of the juvenile judge. Under article 60 of the Code of Criminal Procedure, however, persons under the age of 18 may be held in police custody under the effective supervision of the State prosecutor. Minors also informed the Subcommittee that they had sometimes been held for longer than the longest period provided for in the Code of Criminal Procedure.

80. The Subcommittee remains concerned that some minors had not benefited from fundamental legal safeguards, including the right to be informed of their rights and the reasons for their detention, the right to counsel and the right to a medical examination, and that some had been heard by a judge without a lawyer or a trusted adult present. The Subcommittee also noted that it is still possible, in some cases, to place minors in pretrial detention. It notes, however, that the State party has adopted provisions on juvenile justice in articles 651 to 720 of its new Code of Criminal Procedure.

81. **The Subcommittee reiterates that the detention of minors should be a measure of last resort limited to exceptional cases.[8] It recommends that the State party: (a) promote alternatives to the detention of minors; (b) place minors in police custody only in exceptional circumstances; (c) ensure compliance with the fundamental legal safeguards for minors in police custody; (d) ensure that no juvenile is heard or signs a record of a hearing without a lawyer, trusted adult or parent present; and (e) guarantee that a lawyer can provide assistance in all cases where minors are to be tried for criminal offences.**

3. Legal aid

82. The Subcommittee observed that the State party had not fully implemented the recommendation on legal aid made in its previous report. The State party's new Code of Criminal Procedure has provisions relating to the assistance of a lawyer at the different stages of the judicial process. The Subcommittee nonetheless found that many people did not have access to a lawyer during their time in police custody or when they were brought before a judge. It was clear from the interviews held by the Subcommittee that free legal assistance by public defenders was provided chiefly for criminal cases — those involving

[7] Article 11 of the International Covenant on Civil and Political Rights, to which Benin is a party, states: "No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation."

[8] United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted by the General Assembly in resolution 45/113 of 14 December 1990, paras. 1 and 2.

serious offences in particular — but that the assistance was often very limited. The Subcommittee was also informed that there was a legal aid scheme organized by the bar association, but, according to the members of the bar with whom it spoke, provision of legal aid is neither widespread nor consistent. The adoption of a law on free legal aid would facilitate the work of lawyers and the provision of such aid.[9]

83. **The Subcommittee recommends that the State party adopt a law or decree setting up a system of free legal aid for all and that it provide a suitable budget for that system. The authorities should consider measures to increase the number of lawyers trained in the country each year and to encourage them to establish themselves in the country's different regions.**

4. Use of pretrial detention

84. The new Code of Criminal Procedure (arts. 145, 147 and 149) regulates pretrial detention, which may last no more than 18 months for less serious offences and no more than 24 months for more serious offences. The Subcommittee is concerned that, according to a variety of sources and interviews, prisoners had spent years in detention without trial. Inmates at the Abomey and Cotonou prisons informed the Subcommittee that bail was set too high for most to be able to afford release on bail when it was granted, meaning that they had to remain in detention. In its replies to the Subcommittee, the State party had indicated that an individual's financial situation was not taken into account in the setting of bail.[10]

85. The Subcommittee is alarmed by what seems to be the use of pretrial detention as a rule rather than as an exception. It is particularly troubled by reports that, in some situations, people had spent more time in pretrial detention than they would have for the sentences they faced. The Subcommittee is of the view that the systematic use of pretrial detention, in addition to being a major cause of overcrowding, is a sign of a dysfunctional justice system.

86. **The Subcommittee recommends that the State party: (a) avoid the systematic use of pretrial detention; (b) grant, as far as possible, requests for release pending trial for persons who post bail or are otherwise entitled to release, while considering the economic status of the accused when setting bail; (c) immediately release all persons who have been detained awaiting trial for longer than the longest sentence imposable for the offence of which they stand accused; and (d) ensure that the judicial authorities fully implement the provisions of the Code of Criminal Procedure on the maximum length of pretrial detention.**

VII. Prison policy

A. Situation of persons deprived of their liberty

1. Control by inmates and inequality

87. The Subcommittee considered it important to address in particular the system of control by inmates in the Cotonou prison.

88. The reduction of overcrowding in the Cotonou prison seems to have opened the way for a system of control by inmates that has led to considerable inequality, in the form of privileges based on an individual's economic status. The prisoners themselves were heavily involved in the internal administration of the prison, each building and division of which had its own internal structure. The "bosses" had certain prerogatives, including the right to discipline other prisoners, each building had its own internal rules and the prisoners were also involved in security and provided information to the prison authorities. The Subcommittee received information that the "bosses" were designated by the authorities, not elected by the prisoners as the prison authorities had stated.

[9] See the fifth annual report of the Subcommittee (CAT/C/48/3, paras. 77–82) on the correlation between legal aid, a system of public defence and prevention of torture.

[10] CAT/OP/BEN/1/Add.1, para. 62.

89. The Subcommittee observed for itself that there was a de facto division of the prison into two parts — the big yard and the small yard — which reflected inequalities in the conditions of detention. Being assigned to the buildings on the small yard depended on the prisoners' financial means and on the payment of fairly large amounts of money. It emerged from various interviews conducted by the Subcommittee that prisoners, on their arrival, were offered a spot in the small yard if they had the means to pay for it. Figures of up to 1 million CFA francs were mentioned. The Subcommittee is of the view that this situation results in a system that differentiates between the rich and the poor and leads to the subservience of the latter, who, housed in the big yard, were providing the prisoners from the small yard with small services, such as the laundering of clothes, for which they received payment.

90. The Subcommittee is concerned that this system of control by inmates appears to have led to institutionalized, systematic and widespread corruption, encouraged by the prison authorities and the seeming result of the State party's de facto withdrawal.[11]

91. **The Subcommittee calls on the State party to participate more actively in the management of the Cotonou prison in order to regain control of it. Tasks associated with the exercise of official power should be carried out by prison staff. The authorities should ensure that all prisoners are treated on an equal basis and review the differences in the conditions of detention in the big yard and the small yard. The State party should also eradicate corruption by punishing the perpetrators and informing the prisoners and their families of their rights.**

2. Complaints system

92. The Subcommittee notes the information provided by the State party in its replies.[12] It notes that it was not informed of the existence of a complaints mechanism in the three prisons it visited. The Subcommittee is also concerned about the lack of registers of complaints in these prisons and the failure to inform some prisoners that they could file a complaint if they were victims of ill-treatment. The Subcommittee notes that Decree No. 73-293 of 15 September 1973 on the administration of prisons contains no explicit provisions on complaints by prisoners.

93. **The Subcommittee recommends that the Beninese authorities set up official and effective complaints mechanisms.[13] The prison authorities should systematically inform prisoners of these mechanisms on their arrival. They should also keep a register of complaints in each prison.**

3. Parole

94. The Subcommittee notes that parole is regulated by articles to 808 to 812 of the new Code of Criminal Procedure. It was informed by the authorities of the State party that parole had been granted on a number of occasions in 2015. At the Cotonou prison, the authorities reported that some sixty prisoners had been paroled in 2015. However, consultation of the registers of the prisons visited did not enable the Subcommittee to confirm or estimate the number of persons released on parole since the entry into force of the new Code of Criminal Procedure. The Subcommittee received information, corroborated by inmates at the Abomey prison, that parole is granted less regularly and applications for parole are processed slowly. The Subcommittee finds it regrettable that, despite the entry into force of the new Code of Criminal Procedure, the State party has not made more frequent use of parole for prisoners who may be entitled to it.

95. **The Subcommittee recommends that the State party take the necessary steps to encourage more frequent use of parole for prisoners who qualify for it. The State party should systematically and regularly assess the situation of prisoners who meet**

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[11] In its seventh annual report (CAT/C/52/2, para. 73), the Subcommittee stated: "Corruption can be broadly understood as the dishonest misuse or abuse of a position of power to secure undue personal gain or advantage, or to secure undue gain or advantage for a third party."

[12] CAT/OP/BEN/1/Add.1, paras. 31–44.

[13] Nelson Mandela Rules, rules 54 to 57.

the conditions defined in the relevant articles of the Code of Criminal Procedure and encourage them to apply for parole and, as appropriate, release them.

4. Reintegration policy

96. The Subcommittee notes that the new Code of Criminal Procedure (art. 807) and Decree No. 73-293 on the administration of prisons (arts. 70–72), like the regulations of the Akpro-Missérété prison (art. 18), provide for "social rehabilitation" activities with a view to the reintegration of prisoners.

97. The Subcommittee is concerned that, in general, the reintegration activities (classes, training workshops) mentioned in its previous report had either ended or been significantly curtailed in the prisons it visited, with the exception of the Akpro-Missérété prison, where there were sewing and gardening activities.[14] The Subcommittee also observed that, at the Cotonou and Abomey prisons, opportunities for participation in activities — involving learning a trade, getting an education or producing handicrafts — were not systematically afforded to the prisoners. It noted the existence of metalwork and welding workshops in building E at the Cotonou prison.

98. The Subcommittee calls on the Beninese authorities to set aside a budget and the resources necessary for a variety of activities, including occupational training, learning and education, to be offered to all prisoners with a view to their reintegration into society.

5. Prison visits by the competent authorities and their effects

99. The Subcommittee notes that Decree No. 73-293 on the administration of prisons (arts. 79–81) and the new Code of Criminal Procedure (arts. 241 and 806) provide for inspections of places of deprivation of liberty by various judicial authorities, as well as the possibility of visits by the administrative authorities as described by the Subcommittee in its previous report.[15] The Subcommittee notes that NGOs may visit places of deprivation of liberty, including prisons, provided that they obtain authorization.

100. In its discussions with the authorities, the Subcommittee was informed that some visits, including by the Prosecutor General and the Minister of Justice, had been carried out since 2008, the year of the Subcommittee's previous visit. Interviews held by the Subcommittee with other sources confirmed the Minister of Justice's visits of 26, 27 and 28 August 2015 to the Cotonou and Abomey prisons, as well as the Prosecutor General's visits to the Abomey and Akpro-Missérété prisons. The Subcommittee has nonetheless not received from the authorities an account of the findings of those visits or the recommendations and decisions that were made.

101. The Subcommittee notes that it was unable to find traces of such visits in the registers, which prevented it from verifying how regularly and at what intervals they took place. The Subcommittee remains concerned about reports that inspections of places of deprivation of liberty by the authorities are not very common in Benin. It stresses the importance of such inspections to preventing ill-treatment and verifying the legality of detention.

102. **The Subcommittee recommends that the State party, taking into account its Code of Criminal Procedure, ensure that the authorities regularly carry out prison visits, that the reports of such visits and information on the measures taken to improve the visits are shared, and that the necessary decisions to grant release are made in the event of illegal detention.**[16]

[14] CAT/OP/BEN/1, paras. 266–279.

[15] Ibid., paras. 35–50.

[16] Nelson Mandela Rules, rules 83 to 85.

B. Institutional framework

1. Need for a specialized prison service and training

103. The Subcommittee observed a chronic shortage of staff and a lack of training at the prisons. It also noted that there was no specialized prison service: instead, prison officers were gendarmes seconded to carry out custodial functions. The Subcommittee has not received information on the training of these officers on specific subjects and standards relating to the management and supervision of persons deprived of their liberty. The Subcommittee is of the view that having a sufficient number of prison officers is likely to result in better management of prisoners in correctional facilities. The Subcommittee therefore finds it regrettable that there is no prison service with special training in the supervision and management of prisoners. The Subcommittee acknowledges the draft bill on the special status of prison service personnel, a copy of which it received from the national authorities of the State party, and notes that it contains provisions on the recruitment, training and performance of the duties relating to the administration of a prison that are broadly in line with the requirements established by the Nelson Mandela Rules.[17] However, the Subcommittee was not informed of the planned date for the finalization of the draft and its adoption by the parliament.

104. **The Subcommittee recommends that the State party: (a) increase significantly the number of staff members responsible for the custody of detainees in all the prisons it visited; (b) finalize and adopt the draft bill on the establishment of a specialized prison service; and (c) ensure that education and information regarding the prohibition of torture and ill-treatment are an integral part of the training of prison personnel. The Subcommittee invites the authorities to encourage the recruitment of female prison personnel.**

2. Resources

105. The Subcommittee is concerned about the chronic lack of resources it observed in the prisons it visited. As noted above, the Subcommittee found that the infirmaries lacked medicine and medical equipment. Similarly, the Subcommittee was informed that prisons lacked vehicles for temporary transfers to hospitals. It was also informed that the prison oversight authorities did not have the resources to conduct regular inspections in places of deprivation of liberty. In addition, the prison food budget did not allow for the provision of food of sufficient quantity and quality. The Subcommittee noted that the resources to give each prisoner the necessary personal hygiene products were lacking. Its discussions with the prison authorities made it clear to the Subcommittee that the lack of resources had a negative impact on the conditions of detention.

106. **The Subcommittee recommends that the State party increase budgetary allocations to the prisons it visited to ensure that they have sufficient resources for food, medicines, medical equipment and hygiene products, for the maintenance of decent conditions and for other purposes. The Subcommittee invites the State party to provide all prisons with vehicles for temporary transfers for medical treatment.**

VIII. Repercussions of the visit and conclusion

A. Repercussions of the visit

107. In some of the places visited, some detainees reported that they feared reprisals. The Subcommittee noted on several occasions that detainees were afraid to speak freely with the delegation, in particular at the Agblangandan gendarmerie station, where persons in custody refused to speak to the members of the Subcommittee delegation. At the Cotonou prison, some prisoners expressed the same concern. The Subcommittee notes the assurances provided by the authorities of the State party during the closing meeting and by the

[17] Nelson Mandela Rules, rules 74 to 76.

authorities of the places it visited that no reprisals would be taken against the prisoners who cooperated with the Subcommittee.

108. The Subcommittee wishes to emphasize that any form of intimidation or reprisals against persons deprived of their liberty constitutes a violation of the State party's obligation under the Optional Protocol to cooperate with the Subcommittee. The Subcommittee requests the Beninese authorities to ensure that no reprisals are taken after its visit and to provide it with detailed information on the steps taken to prevent reprisals against staff members or prisoners who spoke to members of the Subcommittee.

B. Conclusion

109. The Subcommittee wishes to emphasize that this report is only the continuation of a constructive dialogue initiated with the Beninese authorities on the above-mentioned challenges.

110. **The Subcommittee requests the Government of Benin to reply, within six months of the date of transmission of the present report, with details of the measures taken by the State party to follow up on its recommendations.**

Annexes

Annex I

[French only]

Liste des personnes rencontrées par le SPT

I. Autorités

Ministère des Affaires Etrangères, de l'Intégration Africaine, de la Francophonie et des Béninois de l'Extérieur

S.E.M. Le Ministre des Affaires Etrangères

M. Simplice Gnanguessy

M. Eric Saizonou

M. Bienvenu A. Houngbedji

M. Tossounon G. Raukayetan

M. Claude Gaba

Romaric Koukpesso

Gilles Gérard Landjohou

Ministère de la Justice, de la Législation et des Droits Humains

M. Alassane Amadou Sani

M. Arsène Dadjo Hubert

M. Boris Pierre Tokpanou

M. Vincent Choubiyi

M. Juien Joseph Tiamou

Ministère de l'Intérieur, de la Sécurité Publique et des Cultes

M. Chabi Boni

M. Latifou Gbodji

René Zimgou

Aurélien Ahichemey

Ministère de la Défense Nationale

M. Paul Tchakou

M. Salifou Kora Zaki

M. Simon Biaou

Ministère de la Santé, Centre National de Santé Mentale

M. Grégoire Magloire Gansou

II. Cour d'Appel (Chambre d'accusation)

M. Thierry Ogoubi

Mme Marie Soude Godonou

Mme Eliane Bada Padonou

III. Organismes des Nations Unies

PNUD

IV. Société civile

Ordre des Avocats du Bénin

Association des femmes défenseurs des droits de l'Homme-Bénin

Association Chrétienne de Lutte contre la Torture (ACAT)-Bénin

Amnesty International-Bénin

Conseil national consultative des droits de l'homme

Enfants Solidaires d'Afrique et du Monde

Fondation Joseph The Worker

Annex II

[*French only*]

Lieux de privation de liberté visités par le SPT

Gendarmeries

Brigade territoriale d'Agblangandan

Commissariats de police

Commissariat Central de Cotonou

Commissariat spécial de Dantokpa

Commissariat d'arrondissement de Tokplebge

Prisons

Prison civile d'Abomey

Prison civile de Cotonou

Prison civile d'Akpro-Missérété

Centres pour enfants et adolescents

Centre de sauvegarde de l'Enfance et de l'Adolescence d'Agblangandan

Office central de la protection des Mineurs, Cotonou